



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB6147

Introduced 2/11/2016, by Rep. Dwight Kay

#### SYNOPSIS AS INTRODUCED:

5 ILCS 120/2.01	from Ch. 102, par. 42.01
5 ILCS 120/3	from Ch. 102, par. 43
5 ILCS 120/3.5	

Amends the Open Meetings Act. Provides that no public body may refuse to allow any of its members to attend any open or closed meeting of the public body. Provides that a court shall (rather than may) assess against any party, except a State's Attorney, reasonable attorney's fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action for non-compliance with the Open Meetings Act. Provides that the attorney's fees and other litigation costs assessed by the court shall be awarded directly to the Office of the Attorney General. Provides that upon a request to review whether a public body committed a violation under the Open Meetings Act, the Attorney General shall issue to the requester and the public body an opinion within 20 days (rather than 60 days) after initiating review.

LRB099 20498 RJF 45021 b

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Open Meetings Act is amended by changing  
5 Sections 2.01, 3, and 3.5 as follows:

6 (5 ILCS 120/2.01) (from Ch. 102, par. 42.01)

7 Sec. 2.01. All meetings required by this Act to be public  
8 shall be held at specified times and places which are  
9 convenient and open to the public. No meeting required by this  
10 Act to be public shall be held on a legal holiday unless the  
11 regular meeting day falls on that holiday.

12 A quorum of members of a public body must be physically  
13 present at the location of an open meeting. If, however, an  
14 open meeting of a public body (i) with statewide jurisdiction,  
15 (ii) that is an Illinois library system with jurisdiction over  
16 a specific geographic area of more than 4,500 square miles,  
17 (iii) that is a municipal transit district with jurisdiction  
18 over a specific geographic area of more than 4,500 square  
19 miles, or (iv) that is a local workforce investment area with  
20 jurisdiction over a specific geographic area of more than 4,500  
21 square miles is held simultaneously at one of its offices and  
22 one or more other locations in a public building, which may  
23 include other of its offices, through an interactive video

1 conference and the public body provides public notice and  
2 public access as required under this Act for all locations,  
3 then members physically present in those locations all count  
4 towards determining a quorum. "Public building", as used in  
5 this Section, means any building or portion thereof owned or  
6 leased by any public body. The requirement that a quorum be  
7 physically present at the location of an open meeting shall not  
8 apply, however, to State advisory boards or bodies that do not  
9 have authority to make binding recommendations or  
10 determinations or to take any other substantive action.

11 A quorum of members of a public body that is not (i) a  
12 public body with statewide jurisdiction, (ii) an Illinois  
13 library system with jurisdiction over a specific geographic  
14 area of more than 4,500 square miles, (iii) a municipal transit  
15 district with jurisdiction over a specific geographic area of  
16 more than 4,500 square miles, or (iv) a local workforce  
17 investment area with jurisdiction over a specific geographic  
18 area of more than 4,500 square miles must be physically present  
19 at the location of a closed meeting. Other members who are not  
20 physically present at a closed meeting of such a public body  
21 may participate in the meeting by means of a video or audio  
22 conference. For the purposes of this Section, "local workforce  
23 investment area" means any local workforce investment area or  
24 areas designated by the Governor pursuant to the federal  
25 Workforce Investment Act of 1998 or its reauthorizing  
26 legislation.

1       No public body may refuse to allow any of its members to  
2       attend any open or closed meeting of the public body.

3       (Source: P.A. 98-992, eff. 8-18-14.)

4             (5 ILCS 120/3) (from Ch. 102, par. 43)

5       Sec. 3. (a) Where the provisions of this Act are not  
6       complied with, or where there is probable cause to believe that  
7       the provisions of this Act will not be complied with, any  
8       person, including the State's Attorney of the county in which  
9       such noncompliance may occur, may bring a civil action in the  
10       circuit court for the judicial circuit in which the alleged  
11       noncompliance has occurred or is about to occur, or in which  
12       the affected public body has its principal office, prior to or  
13       within 60 days of the meeting alleged to be in violation of  
14       this Act or, if facts concerning the meeting are not discovered  
15       within the 60-day period, within 60 days of the discovery of a  
16       violation by the State's Attorney.

17       Records that are obtained by a State's Attorney from a  
18       public body for purposes of reviewing whether the public body  
19       has complied with this Act may not be disclosed to the public.  
20       Those records, while in the possession of the State's Attorney,  
21       are exempt from disclosure under the Freedom of Information  
22       Act.

23       (b) In deciding such a case the court may examine in camera  
24       any portion of the minutes of a meeting at which a violation of  
25       the Act is alleged to have occurred, and may take such

1 additional evidence as it deems necessary.

2 (c) The court, having due regard for orderly administration  
3 and the public interest, as well as for the interests of the  
4 parties, may grant such relief as it deems appropriate,  
5 including granting a relief by mandamus requiring that a  
6 meeting be open to the public, granting an injunction against  
7 future violations of this Act, ordering the public body to make  
8 available to the public such portion of the minutes of a  
9 meeting as is not authorized to be kept confidential under this  
10 Act, or declaring null and void any final action taken at a  
11 closed meeting in violation of this Act.

12 (d) The court shall ~~may~~ assess against any party, except a  
13 State's Attorney, reasonable attorney's fees and other  
14 litigation costs reasonably incurred by any other party who  
15 substantially prevails in any action brought in accordance with  
16 this Section, provided that costs may be assessed against any  
17 private party or parties bringing an action pursuant to this  
18 Section only upon the court's determination that the action is  
19 malicious or frivolous in nature. The attorney's fees and other  
20 litigation costs assessed by the court under this subsection  
21 (d) shall be awarded directly to the Office of the Attorney  
22 General.

23 (Source: P.A. 96-542, eff. 1-1-10.)

24 (5 ILCS 120/3.5)

25 Sec. 3.5. Public Access Counselor; opinions.

1           (a) A person who believes that a violation of this Act by a  
2 public body has occurred may file a request for review with the  
3 Public Access Counselor established in the Office of the  
4 Attorney General not later than 60 days after the alleged  
5 violation. If facts concerning the violation are not discovered  
6 within the 60-day period, but are discovered at a later date,  
7 not exceeding 2 years after the alleged violation, by a person  
8 utilizing reasonable diligence, the request for review may be  
9 made within 60 days of the discovery of the alleged violation.  
10 The request for review must be in writing, must be signed by  
11 the requester, and must include a summary of the facts  
12 supporting the allegation. The changes made by this amendatory  
13 Act of the 99th General Assembly apply to violations alleged to  
14 have occurred at meetings held on or after the effective date  
15 of this amendatory Act of the 99th General Assembly.

16           (b) Upon receipt of a request for review, the Public Access  
17 Counselor shall determine whether further action is warranted.  
18 If the Public Access Counselor determines from the request for  
19 review that the alleged violation is unfounded, he or she shall  
20 so advise the requester and the public body and no further  
21 action shall be undertaken. In all other cases, the Public  
22 Access Counselor shall forward a copy of the request for review  
23 to the public body within 7 working days. The Public Access  
24 Counselor shall specify the records or other documents that the  
25 public body shall furnish to facilitate the review. Within 7  
26 working days after receipt of the request for review, the

1 public body shall provide copies of the records requested and  
2 shall otherwise fully cooperate with the Public Access  
3 Counselor. If a public body fails to furnish specified records  
4 pursuant to this Section, or if otherwise necessary, the  
5 Attorney General may issue a subpoena to any person or public  
6 body having knowledge of or records pertaining to an alleged  
7 violation of this Act. For purposes of conducting a thorough  
8 review, the Public Access Counselor has the same right to  
9 examine a verbatim recording of a meeting closed to the public  
10 or the minutes of a closed meeting as does a court in a civil  
11 action brought to enforce this Act.

12 (c) Within 7 working days after it receives a copy of a  
13 request for review and request for production of records from  
14 the Public Access Counselor, the public body may, but is not  
15 required to, answer the allegations of the request for review.  
16 The answer may take the form of a letter, brief, or memorandum.  
17 Upon request, the public body may also furnish the Public  
18 Access Counselor with a redacted copy of the answer excluding  
19 specific references to any matters at issue. The Public Access  
20 Counselor shall forward a copy of the answer or redacted  
21 answer, if furnished, to the person submitting the request for  
22 review. The requester may, but is not required to, respond in  
23 writing to the answer within 7 working days and shall provide a  
24 copy of the response to the public body.

25 (d) In addition to the request for review, and the answer  
26 and the response thereto, if any, a requester or a public body

1 may furnish affidavits and records concerning any matter  
2 germane to the review.

3 (e) Unless the Public Access Counselor extends the time by  
4 no more than 21 business days by sending written notice to the  
5 requester and public body that includes a statement of the  
6 reasons for the extension in the notice, or decides to address  
7 the matter without the issuance of a binding opinion, the  
8 Attorney General shall examine the issues and the records,  
9 shall make findings of fact and conclusions of law, and shall  
10 issue to the requester and the public body an opinion within 20  
11 ~~60~~ days after initiating review. The opinion shall be binding  
12 upon both the requester and the public body, subject to  
13 administrative review under Section 7.5 of this Act.

14 In responding to any written request under this Section  
15 3.5, the Attorney General may exercise his or her discretion  
16 and choose to resolve a request for review by mediation or by a  
17 means other than the issuance of a binding opinion. The  
18 decision not to issue a binding opinion shall not be  
19 reviewable.

20 Upon receipt of a binding opinion concluding that a  
21 violation of this Act has occurred, the public body shall  
22 either take necessary action as soon as practical to comply  
23 with the directive of the opinion or shall initiate  
24 administrative review under Section 7.5. If the opinion  
25 concludes that no violation of the Act has occurred, the  
26 requester may initiate administrative review under Section

1 7.5.

2 (f) If the requester files suit under Section 3 with  
3 respect to the same alleged violation that is the subject of a  
4 pending request for review, the requester shall notify the  
5 Public Access Counselor, and the Public Access Counselor shall  
6 take no further action with respect to the request for review  
7 and shall so notify the public body.

8 (g) Records that are obtained by the Public Access  
9 Counselor from a public body for purposes of addressing a  
10 request for review under this Section 3.5 may not be disclosed  
11 to the public, including the requester, by the Public Access  
12 Counselor. Those records, while in the possession of the Public  
13 Access Counselor, shall be exempt from disclosure by the Public  
14 Access Counselor under the Freedom of Information Act.

15 (h) The Attorney General may also issue advisory opinions  
16 to public bodies regarding compliance with this Act. A review  
17 may be initiated upon receipt of a written request from the  
18 head of the public body or its attorney. The request must  
19 contain sufficient accurate facts from which a determination  
20 can be made. The Public Access Counselor may request additional  
21 information from the public body in order to facilitate the  
22 review. A public body that relies in good faith on an advisory  
23 opinion of the Attorney General in complying with the  
24 requirements of this Act is not liable for penalties under this  
25 Act, so long as the facts upon which the opinion is based have  
26 been fully and fairly disclosed to the Public Access Counselor.

1 (Source: P.A. 99-402, eff. 8-19-15.)